

Message Text

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FM AMEMBASSY BUCHAREST

TO SECSTATE WASHDC IMMEDIATE 1491

C O N F I D E N T I A L SECTION 1 OF 5 BUCHAREST 0270

E.O. 11652: GDS

TAGS: EEWT, RO

SUBJ: COMMENTARY ON NEGOTIATED TEXT OF US-ROMANIAN TRADE
AGREEMENT

REF: A. STATE 010396 B. STATE 012132 C. STATE 014279
D. STATE 013421 E. STATE 011505 F. BUCH 0265 G. BUCH 0269

1. THIS CABLE TRANSMITS THE SPECIFIC COMMENTS OF THE US
DELEGATION ON THE AD REFERENDUM TEXT OF THE US-ROMANIAN
TRADE AGREEMENT. GENERAL COMMENTS AND AGREEMENT TEXT
FORWARDED SEPTELS. WOULD APPRECIATE RESPONSE, IF POSSIBLE, BY
OPENING BUSINESS BUCHAREST THURSDAY AS TO ACCEPTABILITY OF TEXT.

2. ARTICLE 1 PARA 1. FIRST SENTENCE IS ADAPTED FROM 1973
JOINT ECONOMIC STATEMENT AND IS INCLUDED IN ORDER TO START
AGREEMENT ON POSITIVE AND GENERAL NOTE. IT ALSO SERVES TO MAKE
LESS CONSPICUOUS SUBSEQUENT REFERENCES WHICH BOTH PARTIES MAY
WISH TO PLAY DOWN (REFERENCE TO ANNEX B GATT ACCESSION
PROTOCOL IN CASE OF ROMANIA; REFERENCE TO UNCONDITIONAL MFN
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IN CASE OF US).

3. SECOND SENTENCE HAS BEEN MODIFIED AS CONTEMPLATED BY PARA 2 REFTEL A EXCEPT THAT ROMANIA DID AGREE TO KEEP SPECIFIC REFERENCE TO ANNEX B. THIS SENTENCE HAS BEEN PLACED AHEAD OF SENTENCE GRANTING MFN ON GROUNDS THAT IT, TOGETHER WITH INTRODUCTORY SENTENCE, CONSTITUTES GENERAL STATEMENT ON GATT AS A WHOLE WHICH APPROPRIATELY PRECEDES THE SENTENCE DEALING WITH THE MORE SPECIFIC MFN OBLIGATION.

4. ON THIRD SENTENCE (GRANTING MFN) GOR OBJECTED TO US PROPOSAL OF SIMPLY REFERRING TO GATT WITHOUT EXPLANATORY LANGUAGE. THEY ARGUED THAT MANY WHO READ THE AGREEMENT WILL NOT BE FAMILIAR WITH GATT, SO THERE IS BENEFIT IN SPELLING OUT IN DETAIL THE PROVISIONS INVOLVED. THIRD SENTENCE FOLLOWS GATT LANGUAGE EXCEPT IT OMITTS REFERENCE TO MFN ON CHARGES IMPOSED ON THE INTERNATIONAL TRANSFER OF PAYMENTS FOR IMPORTS OR EXPORTS. BOTH DELEGATIONS FELT OMISSION JUSTIFIED SINCE ARTICLE VI OF THE AGREEMENT CONTAINS AN MFN OBLIGATION COVERING THIS AREA. YOU WILL ALSO NOTE REFERENCE TO QUOTE IMMEDIATE AND UNCONDITIONAL UNQUOTE MFN WHICH GOR VIGOROUSLY ADVOCATED ON GROUNDS THAT IT IS IN ARTICLE 1 OF GATT AND WAS IN QUOTE OTHER AGREEMENT UNQUOTE, I.E. SOVIET AGREEMENT. DELEGATION FEELS THIS IS ACCEPTABLE BECAUSE (1) IT ADDS NOTHING SUBSTANTIVELY TO THE PROPOSAL CONTAINED IN THE INITIAL US DRAFT (SINCE THE TERMS DO INDEED APPEAR IN ARTICLE 1 OF THE GATT), AND (2) ALTHOUGH U.S. MUST PLACE CONDITIONS ON THE DURATION OF THE AGREEMENT BECAUSE OF JACKSON-VANIK, ETC., WE DO NOT HAVE TO PLACE CONDITIONS ON THE MFN CUSTOMS DUTIES, CHARGES AND PROCEDURES, ETC. IN OTHER WORDS WE GRANT UNCONDITIONAL MFN TREATMENT BUT ONLY FOR A LIMITED PERIOD OF TIME.

5. FOURTH SENTENCE MEETS GOR OBJECTION TO OUR FORMULATION QUOTE AS MODIFIED BY SUBSEQUENT PROVISIONS OF THE AGREEMENT UNQUOTE. OBJECTION BASED ON ARGUMENT THAT ROMANIA AND US CANNOT QUOTE MODIFY UNQUOTE PROVISION OF THE GATT AND, IN ANY EVENT, THEY REGARDED OUR FORMULATION AS NEGATIVE IN TONE. SENTENCE TAKES CARE OF PROBLEMS OF DEROGATIONS FROM GATT (SAFE-GUARDS AND POTENTIAL TIME LIMIT ON MFN) IN POSITIVE MANNER ACCEPTABLE TO GOR.

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6. ARTICLE 1 PARA 2. ROMANIANS ADAMANT ON SOME ADVERB MODIFYING QUOTE TO RECIPROCATATE UNQUOTE TO TAKE INTO ACCOUNT THEIR EXPECTATION OF SPECIAL TREATMENT AS DEVELOPING COUNTRY. SINCE REFERENCE TO QUOTE SATISFACTORILY UNQUOTE APPEARS IN TRADE ACT, AS ROMANIANS POINTED OUT, WE BELIEVE THIS TERM PREFERABLE TO ALTERNATIVES. IN LAST SENTENCE, AS COMPROMISE TO CONFLICTING POSITIONS ON RECOGNITION OF ALLEGED RIGHTS OF ROMANIA AS DEVELOPING COUNTRY, WE AGREED TO TAKE SENTENCE FROM

1973 JOINT ECONOMIC STATEMENT.

7. ARTICLE II. ONLY CHANGE IS ADDITION OF QUOTE INCREASING UNQUOTE TO FORMULATION SUGGESTED REFTEL B TO TAKE ADVANTAGE GOR WILLINGNESS ACCEPT DIFFERING FORMULATIONS FOR ROMANIA AND US REFLECTING DIFFERENCES IN ECONOMIC SYSTEMS, PROVIDED THAT IT COULD OBTAIN PRESENTATIONAL BALANCE IN OTHER RESPECTS. QUOTE INCREASING UNQUOTE BALANCES STATEMENT THAT GOR EXPECTS ITS ORGANIZATIONS TO PLACE QUOTE SUBSTANTIAL UNQUOTE ORDERS IN THE US.

8. ARTICLE III. GOR ACCEPTED OUR ART. III SUBJECT TO AGREEMENT ON ANNEX I (SEE BELOW), BUT INSISTED ON A FURTHER CHANGE IN ART. III PARA 3, MAKING IT SIMILAR TO LANGUAGE OF US-SOVIET TRADE AGREEMENT.

9. ARTICLE IV. GOR WILLINGNESS TO ACCEPT INTACT OR IN SUBSTANCE (WITH EXCEPTION NOTED BELOW) EVERY PROVISION IN US DRAFT REPRESENTS UNEXPECTED RESPONSIVENESS IN PRACTICAL AREAS. EXTENSIVENESS OF BUSINESS FACILITATION PROVISIONS IN ARTICLE IV AN RELATED ANNEX 2 CONSIDERABLY EXCEEDS COVERAGE IN US-USSR COMMERCIAL AGREEMENT. PRINCIPAL DEPARTURE FROM US DRAFT WAS INCLUSION IN PARAS 5, 6, 7, AND 8 OF REFERENCE TO QUOTE IN ACCORDANCE WITH THE PROCEDURES AND REGULATIONS APPLICABLE IN EACH COUNTRY UNQUOTE. THIS OF COURSE IS MAJOR QUALIFICATION OF RIGHTS REFLECTED IN THESE PROVISIONS. GOR MADE CLEAR THIS FORMULATION WAS PRICE OF INCLUSION OF THESE PROVISIONS, AND EXTENDED NEGOTIATIONS FAILED TO MOVE IT TOWARD ACCEPTING ANY MODIFICATION IN WORDING OF FORMULATION. OTHER DEPARTURES FROM

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TO SECSTATE WASHDC IMMEDIATE 1492

C O N F I D E N T I A L SECTION 2 OF 5 BUCHAREST 0270

US DRAFT INCLUDE:

A. PARA 5: QUOTE LOCALITIES UNQUOTE SUBSTITUTED FOR
QUOTE PLACES UNQUOTE AT FIRM INSISTENCE OF GOR, IN ORDER TO
AVOID INCLUSION OF PRIVATE HOUSING ARRANGEMENTS, WHICH ARE
NO LONGER POSSIBLE HERE, WITHIN SCOPE OF PROVISION.

B. PARA 6: TO OFFSET SOMEWHAT THE FORCE OF REFERENCE
TO QUOTE PROCEDURES AND REGULATIONS APPLICABLE IN EACH COUNTRY
UNQUOTE, WE OBTAINED AFFIRMATION THAT QUOTE NO RESTRICTIONS SHALL
EXIST IN PRINCIPLE ON CONTACTS BETWEEN REPRESENTATIVES OF AMERICAN
FIRMS AND ROMANIAN ORGANIZATIONS UNQUOTE.

10. ARTICLE V. GOR ACCEPTED PARAS 1 AND 2 AS PROPOSED BY OUR
SIDE. WE PROPOSED MODIFIED LANGUAGE OF PARA 3 IN RESPONSE
TO GOR ARGUMENTS THAT (1) REQUIREMENT OF PROVIDING QUOTE
FULL AND EFFECTIVE UNQUOTE LEGAL PROTECTION IS AMBIGUOUS,
INTRODUCING NEW AND UNKNOWN STANDARDS INTO THEIR LEGAL REGIME
(ROMANIA IS PARTY TO BERNE CONVENTION), AND (2) NATIONAL
TREATMENT IS SUFFICIENT. APPEARS THAT THIS LANGUAGE GIVES
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US EVERYTHING WE ASKED FOR
AS PRACTICAL MATTER INCLUDING FUNDAMENTAL PROTECTION OF
NATIONAL TREATMENT WHICH WE HAVE NO REASON TO BELIEVE
IS NOT FULL AND EFFECTIVE PROTECTION. IN LIGHT OF SENATE
FINANCE COMMITTEE REPORT REFERENCE PAGE 209 TO FUNDAMENTAL
PROTECTIONS THIS APPEARS TO PROVIDE BASIS FOR POSITION THAT
REQUIREMENT OF SECTION 405(B)(5) MET.

11. ARTICLE VI. PRINCIPAL US CONCESSION IS DELETION OF
NATIONAL TREATMENT REQUIREMENT IN PARAS 1 AND 3. SINCE PARA 1
APPLIES ONLY TO INTERNATIONAL TRANSACTIONS, IN WHICH RIGHTS
OF ROMANIAN NATIONALS, ETC. ARE LIMITED AT BEST, DELETION IN PARA
1 IS NOT GREAT LOSS AS PRACTICAL MATTER. NATIONAL TREATMENT
IN PARA 3 SIMILARLY SEEMS TO BE OF RELATIVELY LITTLE VALUE IN
VIEW OF ELABORATE RESTRICTIONS ON ROMANIAN ORGANIZATIONS' USE OF
ACCOUNTS.

12. IN PARA 1 WE GOT GOR AGREEMENT TO SUBSTITUTE QUOTE FINANCIAL
TRANSACTIONS UNQUOTE FOR QUOTE PAYMENTS, REMITTANCES AND TRANS-

FERS OF FUNDS UNQUOTE. BROADER TERM, WHICH IS ALSO INSERTED IN PARA 2, APPEARS SOMEWHAT BETTER (E.G. IN PARA 2 CREDIT TRANSACTIONS NOW COVERED).

13. PROVISIO REGARDING LOCAL CURRENCY (PARA 2) INCLUDED IN INITIAL US PROPOSAL IS NOW A SEPARATE SENTENCE; NO SUBSTANTIVE CHANGE INTENDED. REFERENCE TO QUOTE PURCHASES UNQUOTE CHANGED TO QUOTE EXPENDITURES UNQUOTE IS INTENDED TO COVER SUCH ITEMS AS PAYMENTS OF RENT WHICH US FIRMS MAY WISH TO MAKE IN LOCAL CURRENCY. REFERENCE TO QUOTE RECEIVED IN AN AUTHORIZED MANNER UNQUOTE REFERS TO CURRENCY REGULATION VIOLATIONS AND DOES NOT SEEM CONTROVERSIAL. REFERENCE TO QUOTE IN ACCORDANCE WITH THE REGULATIONS APPLICABLE TO SUCH EXPENDITURES UNQUOTE IS UNFORTUNATE POTENTIAL LOOPHOLE, BUT DELEGATION FOUND GOR VERY SENSITIVE ON THIS POINT (AND ON SEVERAL OTHER SIMILAR POINTSPHERE SIMILAR CHANGES MADE).

14. CHANGE IN LAST SENTENCE OF PARA 2 CLARIFIES ROMANIAN AGREEMENT TO GRANT MFN EXCHANGE RATE TREATMENT IN CASE OF ALL CURRENCIES, NOT JUST DOLLARS. ADDITION IN PARA 3 OF QUOTE AND OTHER CURRENCIES UNQUOTE EXPANDS MFN OBLIGATION TO FOREIGN CURRENCIES (E.G. US FIRM MAY WISH TO HOLD SWISS FRANC ACCOUNT)
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WHICH WOULD BE PERMITTED UNDER PARA 3 IF SWISS FIRMS PERMITTED TO DO SO.

15. LOOKING AT ARTICLE 6 AS A WHOLE DELEGATION FEELS THAT MFN OBLIGATIONS ARE IMPORTANT COMPLEMENT TO ARTICLE 1 AND ARE OF SIGNIFICANT VALUE IN PROTECTING US FIRMS AGAINST DISCRIMINATION VIS-A-VIS WEST EUROPEAN OR OTHER COMPETITORS.

16. ARTICLE VII. CHANGES AUTHORIZED IN REFTEL C NOT YET COMMUNICATED IPO ROMANIANS ALTHOUGH THEY HAVE BEEN REFLECTED IN TEXT TRANSMITTED TO DEPARTMENT SEPTTEL. WE DO NOT ANTICIPATE PROBLEMS ON THESE POINTS. FOLLOWING CHANGES ARE IN ADDITION TO THOSE OF REFTEL C.

A. DELETION OF NATIONAL TREATMENT STANDARD IN PARA 3 WAS AT FIRM ROMANIAN INSISTENCE. ROMANIANS MAINTAINED THAT IN SEVERAL RESPECTS, E.G. REQUIREMENT THAT PORT FEES BE PAID IN FOREIGN CURRENCY, THEY UNABLE OFFER NATIONAL TREATMENT.

B. FINAL PORTION OF PARA 3 TO EFFECT THAT EACH PARTY MAY RESERVE RIGHTS RELATED TO COASTING TRADE, INLAND NAVIGATION, AND NATIONAL FISHERIES WAS DROPPED BECAUSE UNNECESSARY WITH DELETION NATIONAL TREATMENT STANDARD. NEW PARA 4 INSERTED TO DEAL WITH FISHERIES WITH SAME EFFECT AS ORIGINAL, PLUS INNOCUOUS SENTENCE REAFFIRMING FISHERIES AGREEMENT.

C. ROMANIANS AGREED TO INCLUSION OF BOTH NATIONAL SECURITY AND PORT SECURITY REFERENCES AFTER PRESSING AT SOME LENGTH, DESPITE OUR ADAMANT OPPOSITION, CONTENTION THAT ARTICLE X, NATIONAL SECURITY PROVISION, WOULD PROVIDE APPROPRIATE AUTHORITY.

D. ROMANIANS ALSO AGREED DROP ANY REFERENCE TO POSSIBILITY OF NEGOTIATING MARITIME AGREEMENT. WHEN THEY PROPOSED QUOTE

COMPROMISE UNQUOTE FORMULATION TO EFFECT THAT BOTH PARTIES WOULD AGREE TO STUDY POSSIBILITY OF NEGOTIATING MARITIME AGREEMENT, WE REFUSED, PER REFTEL D.

17. ARTICLE 18 IS SUBSTANTIVELY THE SAME AS ORIGINAL US PROPOSAL. THUS PARA 3 HAS BEEN RECAST AS A PROVISIO TO THE LAST SENTENCE OF PARA 2, WHICH IS LOGICAL SINCE THAT IS THE SENTENCE
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DEALING WITH SPECIFIC CONTRACTUAL PROVISIONS ON ARBITRATION. THE ADDITION OF THE WORDS QUOTE OR PLACE UNQUOTE PROBABLY DOES NOT EXPAND FORMER PARA 3, AND IN ANY EVENT IS HARMLESS SINCE IT SIMPLY REAFFIRMS THE RIGHTS OF PARTIES TO AGREE TO ARBITRATE IN NEW YORK OR BUCHAREST, WHICH THEY COULD DO

REGARDLESS OF WHETHER WE ADDED THE QUOTED WORDS OR NOT.

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C O N F I D E N T I A L SECTION 3 OF 5 BUCHAREST 0270

18. ARTICLE IX. FINAL SENTENCE PARA 1 REVISED TO REFLECT ROMANIAN INSISTENCE THAT ASSURANCE OF UNRESTRICTED ACCESS TO GOVERNMENT COMMERCIAL OFFICES BE LIMITED TO THOSE ENGAGED IN COMMERCIAL ACTIVITIES. WE DO NOT BELIEVE THAT THIS LIMITATION WOULD IMPEDE OPERATION OF A USG COMMERCIAL OFFICE HERE.

19. IN ARTICLE IX PARA 2 WE HAVE AGREED TO ADD QUOTE TO THE EXTENT THAT THEY ENJOY DIPLOMATIC IMMUNITY UNQUOTE TO THE INITIAL US PROPOSAL IN RESPONSE TO A ROMANIAN REQUEST TO CLARIFY THE PROPOSAL. WE EXPLAINED THE VIENNA CONVENTION SITUATION IN THE U.S. AND ATTEMPTED TO GET SIDE LETTER FORMAT SIMILAR TO THAT FOLLOWED UNDER SOVIET AGREEMENT. GOR INTRODUCED CONTENTIOUS REQUEST INVOLVING SENTENCE ON DIPLOMATIC IMMUNITY FOR COMMERCIAL OFFICERS AND STAFF MEMBERS WHICH REJECTED. COMPROMISE SEEMS TO DELEGATION TO MEET THE INTENT OF THE ORIGINAL PROVISION AND ADEQUATELY DEAL WITH THE PROBLEM ADDRESSED IN THAT PROVISION.

20. ARTICLES X AND XI. US DRAFT WAS ACCEPTED, WITH ADDITION TO ARTICLE XI OF QUOTE WHICH SHALL BE PRESENTED TO THE GOVERN-
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MENTS OF BOTH COUNTRIES END QUOTE, WHICH WE CONSIDERED UNDER-
STOOD.

21. ARTICLE 12. PARA 1 MODIFIED TO PROVIDE THAT AGREEMENT ENTERS INTO FORCE ON DATE OF EXCHANGE OF NOTES, RATHER THAN DATE AGREED IN EXCHANGE OF NOTES, A SIMPLIFYING AND NON-SUBSTANTIVE CHANGE. LAST CLAUSE OF PARA 1 ADDED FOR CLARITY SINCE REFERENCE TO QUOTE REMIAN IN FORCE UNQUOTE CONTAINED IN ORIGINAL US PARA 2 NOW DELETED.

22. NEW PARA 2 (A) UNCHANGED FROM REFTEL E. PARA 2 (B) MODIFIED TO DELETE OBJECTIONABLE SENTENCE ON ENDEAVORING TO AVOID ACTION UNDER (C) UNTIL CONSULTATIONS COMPLETED. PARA 2 (B) ALSO MODIFIED TO INCLUDE SENTENCE SUGGESTED REFTEL. LANGUAGE ADDED END OF SUGGESTED SENTENCE INSERTED TO MEET REPEATED GOR EXPRESSIONS OF CONCERN EVIDENCED IN DELETED SENTENCE. REFERENCE TO QUOTE CIRCUMSTANCE THAT HAVE ARISEN UNQUOTE MAY BE USEFUL IMPLICIT REFERENCE TO LIKELY FOCUS OF CONSULTATIONS, I.E. EMIGRATION. REMAINING ADDITIONAL LANGUAGE EXPRESSES OBJECTIVE OF CONSULTATIONS, WHICH GOR ARGUED STRONGLY

FOR HERE AND IN SAFEGUARDS AREA, AND WHICH WE FEEL WOULD IN FACT BE THE OBJECTIVE OF CONSULTATIONS.

23. PARA 2 (C) PROVIDES UNTRAMMELED RIGHT TO TERMINATE AGREEMENT, WITHOUT REFERENCE TO CONSULTATION, THEREBY MEETING BASIC OBJECTIVE OF SECTION. REVISIONS IN PARA 2 (C) DESIGNED TO MEEET CONCERNS EXPRESSED REFTEL. INTRODUCTORY CLAUSE SAME. LANGUAGE QUOTE THE OTHER PARTY UNQUOTE CHANGED FROM REFTEL TO QUOTE EITHER PARTY UNQUOTE TO MAKE CLEAR THAT IF US UNABLE TO CARRY OUT ITS OBLIGATIONS UNDER AGREEMENT, U.S. (AS WELL AS ROMANIA) HAS RIGHT TO TERMINATE. EFFECT OF SENTENCE IS TO GIVE EITHER PARTY RIGHT TO TERMINATE WHOLE AGREEMENT, BUT NO RIGHT TO TERMINATE PARTICULAR ARTICLES WITHOUT AGREEMENT OF OTHER PARTY. THIS DESIGNED TO PREVENT POSSIBILITY OF PICKING AND CHOOSING AMONG BURDENSOME ARTICLE S AND GRADUALLY ERODING AGREEMENT AS REFERRED TO IN REFTEL. AT SAME TIME PARA 2 (C) GIVES US LEGAL ESCAPE NEEDED BECAUSE OF TRADE ACTT AND, THROUGH THREAT OF TERMINATING ENTIRE AGREEMENT, BARGAINING LEVERAGE TO NEGOTIATE TERMINATION OF PARTICULAR PROVISIONS ONLY.

LAST SENTENCE AS SUGGESTED REFTEL.

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24. PARA 2 (D) CHANGED TO PROVIDE FOR AUTOMATIC EXTENSION OF AGREEMENT, SUBJECT TO EITHER PARTY EXPRESSLY TAKING ACTION TO TERMINATE, AT END OF 3 YEARS. ALTHOUGH THIS OBVIOUSLY IS CLOSE TO LINE, WE FEEL IS LEGALLY PERMISSIBLE BECAUSE, AS EXPIRATION OF AGREEMENT APPROACHES, PRESIDENT CAN MADE KECISIONS CONTEMPLATED SECTION 405 (B) (1) TRADE ACT AND THERE IS NO QUESTION THAT IN FACT AGREEMENT CANNOT RUN LONGER THAN 3 YEARS UNLESS WE ARE SATISFIED THAT STATUTORY CONDITIONS MET AND WE DECIDE TO PERMIT EXTENSION. LANGUAGE PAGE 208 SENATE FINANCE COMMITTEE REPORT QUOTE BY WHATEVER MECHANISM THE PARTIES AGREE UPON UNQUOTE ALSO HELPFUL. GOR EXPRESSED STRONG DESIRE TO FOLLOW THIS APPROACH WHICH THEY CHARACTERIZED AS MORE POSITIVE. THEY ALSO POINTED OUT THAT, AS PRACTICAL MATTER, EASIER TO LET AGREEMENT CONTINUE BY DOING NOTHING THAN BY DRAFTING NOTE. THIS PROPOSAL SEEMED TO DELEGATION TO HAVE POLITICAL VALUE, ALTHOUGH NOT COMMITTING US TO ANYTHING MORE THAN ORIGINAL DRAFT, PARTICULARLY

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C O N F I D E N T I A L SECTION 4 OF 5 BUCHAREST 0270

IN CONTEXT OF WHAT MUST BE DIFFICULT ARTICLE FOR GOR TO
ACCEPT IN LIGHT OF SOVIET DENUNCIATION.

25. ANNEX 1: SAFEGUARDS. ROMANIANS AWARE THAT STRINGENT
REQUIREMENTS CONTAINED IN OUR ORIGINAL ANNEX I DERIVE
NOT FROM EXPRESS REQUIREMENTS OF TRADE ACT BUT FROM STATEMENT
IN LEGISLATIVE HISTORY THAT US-ROMANIAN AGREEMENT BE SIMILAR
TO US-SOVIET AGREEMENT. THEY ARE OF COURSE ALSO AWARE THAT
THE SOVIET UNION HAS RENOUNCED THIS AGREEMENT AND THAT THEY ARE
NOW ALONE IN ACCEPTING THESE PROVISIONS. UNDER THESE CIRCUM-
STANCES FACE-SAVING FORMULATIONS EVEN IF DEVOID OF SUBSTANTIVE
GIVE ON OUR PART HAS ASSUMED IMPORTANCE TO THE ROMANIANS
CONSIDERABLY IN EXCESS OF THEIR APPARENT LEGAL WEIGHT OR OF
THEIR IMPORTANCE TO US. THIS IS THE UNDERLYING BASIS FOR
AGREEMENT ON THE TEXT ON SAFEGUARDS.

26. TO THE BEST OF OUR KNOWLEDGE THE NEGOTIATED PROVISIONS
(REFTEL F) ARE THE TOUGHEST EVER AGREED TO BY ANY GATT MEMBER,
ESPECIALLY WHEN CONSIDERED IN CONNECTION WITH THE NEW DEFINITION
OF MARKET DISRUPTION CONTAINED IN SECTION 406. THE ROMANIANS
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REGARD THE AGREED TEXT AS DISCRIMINATORY AND ARBITRARY
AS WELL AS IN BLATANT DISREGARD OF OUR GATT COMMITMENT
BUT WILL ACCEPT ARTICLE III, AND PARAS 1C, 2A AND 2B
OF OUR ANNEX IN ORIGINAL FORM.

27. WE HAVE AGREED ON THE FOLLOWING MODIFICATIONS OF ANNEX PARAS 1A AND 1B AND THE ADDITION OF A 1D, AS EXPLAINED BELOW, ON AN AD REFERENDUM BASIS.

A. PARA 1/A. THE FIRST SENTENCE REPRESENTS AN EFFORT TO STATE CLEARLY THE PURPOSE OF THE CONSULTATIONS WHILE AVOIDING THE REQUIREMENTS THAT WE QUOTE DEMONSTRATE THE EXISTENCE OF A MARKET DISRUPTION SITUATION END QUOTE. THE LIST OF FACTORS WHICH MAY BE INCLUDED IN THE REVIEW WAS EXTENDED BEYOND THOSE IN TEXT TRANSMITTED BUCHAREST 200 ONLY AFTER ROMANIA AGREED TO DROP ITS ORIGINAL 1/D PROPOSALS AND TO MODIFY SUBSTANTIALLY ITS PREFERRED LANGUAGE FOR THE ITEMS INCLUDED AFTER QUOTE INVENTORIES END QUOTE. AGREED LANGUAGE SIGNIFICANTLY PREFERABLE IN OUR VIEW TO ROMANIAN PROPOSAL THAT IMPORTS FROM OTHER COUNTRIES, ORIGIN OF IMPORTS, AND INTERESTS OF THE EXPORTER BE INCLUDED. AS TRADE ACT DOES NOT MENTION FACTORS WHICH MAY BE REVIEWED IN CONSULTATIONS, AND AS THIS CLEARLY HAS NO INFLUENCE ON TRADE COMMISSION DETERMINATION, AND AS WE ARE NOT REQUIRED TO REVIEW IN CONSULTATIONS ALL FACTORS LISTED, IT APPEARS TO US THAT INCLUSION OF THESE FACTORS UNOBJECTIONABLE. IN ADDITION IT CAN BE PERSUASIVELY ARGUED THAT THE INCLUSION OF THESE FACTORS WILL BETTER ENABLE US TO REACH A MUTUALLY AGREED SOLUTION AND PRECLUDE UNILATERAL ACTION.

B. PARA 1/B. QUOTE DEEMED AGREED UNQUOTE HAS BEEN CHANGED TO QUOTE IMPLEMENTED END QUOTE. WHILE ROMANIANS AGREED TO COMMITMENT TO TAKE THE ACTION WE DEEM NECESSARY THEY ADAMANTLY REFUSED PROVISION TO EFFECT THAT THE ACTION WOULD BE QUOTE DEEMED AGREED UNQUOTE IF IN FACT CONSULTATIONS HAVE NOT PRODUCED MUTUALLY AGREEABLE SOLUTION. WE BELIEVE THIS FORMULATION MAY BE SEEN AS EVEN STRONGER THAN OUR ORIGINAL DRAFT, AS COMMITMENT IS NOT TO ACT.

C. PARA 1/D. THIS WAS OUR PROPOSAL IN RESPONSE TO INTRACTABLE INSISTENCE ON SOME VERSION OF THEIR ORIGINAL 1C PROVIDING QUOTE IF AT THE CONCLUSION OF THE CONSULTATIONS CONFIDENTIAL

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OR PRIOR TO IT, SUCH RESTRICTIVE ACTION AS MENTIONED IN PARA 1/B ABOVE IS TAKEN, NEW CONCESSIONS SHOULD BE GRANTED TO THE PARTY WHOSE PRODUCTS WERE RESTRICTED IN ORDER TO MAINTAIN THE GENERAL LEVEL OF RECIPROCAL CONCESSIONS. IF SUCH CONCESSIONS ARE NOT GRANTED THE EXPORTING PARTY IS FREE TO SUSPEND THE APPLICATION TO THE TRADE OF PARTY TAKING SUCH ACTION OF SUBSTANTIALLY EQUIVALENT CONCESSIONS OR FACILITIES END QUOTE.

28. WE BELIEVE THE AGREED FORMULATION IS ACCEPTABLE FOR THE FOLLOWING REASONS IN ADDITION TO THOSE IN PARAS 25 AND 26 ABOVE.

A. IT PROVIDES NO RIGHTS OR OBLIGATIONS IN ADDITION TO THOSE IN ROMANIAN ACCESSION PROTOCOL (AND GATT ARTICLE XIX), WHICH WOULD IN ANY CASE BE APPLICABLE UNDER ARTICLE I OF AGREED TEXT (AND ORIGINAL US DRAFT).

B. IT AVOIDS EXPLICITLY STATING THE RIGHT REFERRED TO.

C. STATEMENT IN LEGISLATIVE HISTORY THAT THIS AGREEMENT SHOULD BE SIMILAR TO THE US-SOVIET AGREEMENT SHOULD NOT BE

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INTERPRETED TO PRECLUDE ADDITION OF PROVISIONS FOR CIRCUMSTANCES UNLIKE THOSE PRESENT IN US-SOVIET ECONOMIC RELATIONSHIP. REFERENCE TO ROMANIA'S GATT MEMBERSHIP APPEARS TO BE CLEAR WAY OF DISTINGUISHING ITS SITUATION FROM THE SOVIET SITUATION.

D. AS WE HAVE ARGUED CONSISTENTLY THAT LEVEL OF ROMANIAN TARIFF HAS LITTLE IMPACT ON ULTIMATE ROMANIAN IMPORT PURCHASING DECISIONS, MODIFICATION OF A DUTY ON A LIMITED VOLUME OF TRADE WOULD IN ITSELF HAVE LITTLE PRACTICAL EFFECT ON US EXPORTS.

29. ANNEX 2 - BUSINESS FACILITATION. SUBSTANTIVE CHANGES IN ANNEX B REFLECT NECESSITY OF CONFORMING US TEXT TO ROMANIAN LAW. FORMS OF REPRESENTATION WE SOUGHT PARA 3 WERE TOO BROAD. IT IS NOT POSSIBLE FOR FOREIGNERS TO PURCHASE REAL ESTATE IN ROMANIA, THUS DELETION OF PROVISION FOR THIS IN PARA 5 WAS NECESSARY. PARAS 6 AND 7 WERE ADJUSTED TO TAKE MAXIMUM BENEFIT OF CUSTOMS REGULATIONS OF BOTH PARTIES.

30. MOST DISCUSSION WAS ON PARA 9 CONCERNING RIGHT OF FOREIGN
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FIRMS TO HIRE LOCAL EMPLOYEES DIRECTLY. ALTHOUGH ARTICLE 21 OF DECREE NO. 15 OF JAN 15, 1971, PROVIDES THAT AGENCIES OF FOREIGN TRADING FIRMS MUST BE ENGAGED THROUGH ROMANIAN CHAMBER OF COMMERCE, ARTICLE 23 LEAVES ROOM FOR THE POSSIBILITY OF OTHER ARRANGEMENTS. LAST SENTENCE OF PARA 9 MAY BE A FIRST STEP TOWARD DIRECT HIRE AND AS SUCH IS AN ACHIEVEMENT, ESPECIALLY CONSIDERING DEGREE TO WHICH US TEXT CONFLICTED WITH ROMANIAN LAW AND SOCIAL CONCEPTS.
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